

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ORDER :
Motion granted.
John Bryant,
USMJ

JAMES V. KIMBRO, CATHEY P.)
KIMBRO and JEFFREY G. KIMBRO)
Plaintiffs,)
v.) No. 3:11-cv-00049
Judge William J. Haynes, Jr.
OFFICER ERIC TOMS, Individually, and)
in his official capacity; OFFICER J.)
SMITH, Individually, and in his official)
capacity; OFFICER ALLEY EVOLA,)
Individually, and in his official capacity;)
OFFICER BOB KUPCZYK, Individually,)
and in his official capacity; OFFICER)
MARCUS ALLBRIGHT, Individually, and)
in his official capacity; JOHN DOES;)
CITY OF FRANKLIN POLICE)
DEPARTMENT; CITY OF SPRING)
HILL POLICY DEPARTMENT;)
WILLIAMSON COUNTY JAIL;)
WILLIAMSON COUNTY SHERIFF'S)
DEPARTMENT; MR. DERRICK SMITH;)
MS. LISA M. CARSON; MR. MARK)
NOLAN; MS. KATHRYN W. OLITA;)
MS. KRISTEN BEREXA,)
Defendants.)

MOTION FOR LEAVE OF COURT TO FILE REPLY BRIEF TO PLAINTIFFS'
RESPONSE TO MOTION TO DISMISS OF DEFENDANTS MARK NOLAN AND
KATHRYN W. OLITA

COME NOW Defendants Mark Nolan and Kathryn W. Olita (hereinafter collectively
"Defendants"), by and through counsel of record, Glassman, Edwards, Wyatt, Tuttle & Cox,
P.C., and file this Motion for Leave of Court to File Reply Brief to Plaintiffs' Response to

Motion to Dismiss under Rule 12 of the Federal Rules of Civil Procedure. In support of this

Motion, Defendants would respectfully state as follows:

1. On May 13, 2011, these Defendants filed a Motion to Dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure. See D.E. 62.

2. On June 24, 2011, Plaintiffs filed a thirty (30) page response to Defendants' Motion to Dismiss. See D.E. 103.

3. These Defendants submit that the Plaintiffs' Response Brief to these Defendants' Motion necessitates a Reply Brief in order to address the argument contained therein, which includes the standard for pleading a RICO action (and the failure of Plaintiffs to meet said standard), factual assertions required, the standard for amending a complaint, and the reason why discovery needed is irrelevant for purposes of a Rule 12 motion to dismiss.

4. Specifically, Plaintiffs in their Motion request leave of court to file an Amended Complaint via an advisory opinion from the Court, which warrants a response by these Defendants. Similarly, Plaintiffs allege discovery is needed to prove one general and conclusory allegation as to these Defendants, which further necessitates a response.

5. Pursuant to the Local Rules of this Court, “[a] reply memorandum may be filed upon leave of Court.” Local Rule 7.01 to United States District Court for Middle District of Tennessee.

6. Defendants agree to limit their argument to no more than ten (10) pages in said Reply, plus the caption, signature block and certificate of service. The proposed Reply Brief is attached hereto as Exhibit A.

7. Defendants submit that the filing of a Reply will assist the Court in its determination of Defendants' Motion to Dismiss, and therefore based upon good cause shown

would respectfully request leave of court to file a Reply Brief to the Plaintiffs' Response to these Defendants' Motion to Dismiss.

Respectfully Submitted,

**GLASSMAN, EDWARDS, WYATT
TUTTLE & COX, P.C.**

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Our File: 11-158

*Attorneys for Mark Nolan and
Kathryn W. Olita*

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2011, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. mail, first-class postage prepaid. Parties may access this filing through the Court's electronic filing system.

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